



Florida Appellate Court Holds that Appraisal Award Constitutes a “Favorable Resolution” and Permits Insured to Pursue Bad Faith Claim

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The Florida District Court of Appeal, Fourth District, recently held that an appraisal award in favor of an insured constitutes the “favorable resolution” of an action for insurance benefits necessary to proceed with a statutory first-party bad faith action under Florida law. *Trafalgar v. Zurich Ins. Co.*, 2012 WL 3822215 (Fla. App. 4 Dist. Sept. 5, 2012).

Underlying Facts

Trafalgar, the plaintiff/insured, submitted a claim to Zurich Ins. Co., the defendant/insurer, for damage sustained to its shopping center during Hurricane Wilma. After beginning its investigation, the insurer issued two payments to Trafalgar totaling \$580,856.40. Subsequently, in June 2006, the plaintiff submitted a sworn statement in proof of its loss, claiming \$1,826,938.54 in damages. After the insurer responded to the proof by advising that it was continuing to investigate the claim, the plaintiff filed suit, alleging that the insurer breached the policy by failing to pay all proceeds claimed and due. One month after the complaint was filed, the insurer informed the plaintiff that it had completed its investigation and tendered an additional payment, bringing its total payments to \$641,730.32. The insurer then invoked the policy’s appraisal provision. The appraisal award, which was more than double the payments previously made by the insurer, was timely paid within the requisite 30 days.

Following payment of the appraisal award, the insurer moved for and obtained summary judgment on the breach of contract claim. However, the trial court also granted Trafalgar’s motion to amend its complaint to state a cause of action for statutory bad faith based on the insurer’s alleged pattern of delay and denial of the claim asserted, before and after litigation was filed. The insurer countered that the statutory bad faith action was barred because the court

granted its motion for summary judgment, and therefore, the plaintiff had failed to obtain a “favorable resolution” of the underlying breach of contract claim. The trial court again granted summary judgment in the insurer’s favor and the plaintiff appealed.

Appraisal Award Equals “Favorable Resolution”

Under Florida law, a statutory first-party bad faith action is premature until two conditions have been satisfied: “(1) the insurer raises no defense which would defeat coverage, or any such defense has been adjudicated adversely to the insurer; and, (2) the actual extent of the insured’s loss must have been determined.” *Vest v. Travelers Ins. Co.*, 753 So.2d 1270, 1273 (Fla. 2000) (citing *Blanchard v. State Farm Mut. Auto. Ins. Co.*, 575 So.2d 1289, 1291 (Fla. 1991)). The court further explained that an insured’s action for insurance benefits against the insurer necessarily must be resolved favorably for the insured before the cause of action for bad faith in settlements can accrue. *Id.*

Applying these standards, the Fourth District Court of Appeal first found that both statutory bad faith conditions had been satisfied: (1) The insurer waived any defense to coverage by acknowledging and paying a loss amount to the plaintiff; and (2) the appraisal award resulted in a final determination of the loss amount. Next, the Court analyzed the “favorable resolution” standard. The insurer argued that its favorable summary judgment on the underlying breach of contract action precluded the plaintiff’s ability to satisfy the “favorable resolution” standard and pursue a bad faith cause of action. Citing the Florida Supreme Court decision, *Dadeland Depot, Inc. v. St. Paul Fire & Marine Ins. Co.*, 945 So.2d 1216 (Fla. 2006), which held an arbitration award establishing the validity of an insured’s claim satisfied the condition precedent required

to bring a bad faith action, the court held a breach of contract action is not the only way of obtaining a favorable resolution. Because there was no meaningful distinction between an arbitration award and the appraisal award for purposes of determining whether the underlying action was resolved favorably to the insured, the court found in favor of the insured.

Conclusion

Under *Trafalgar*, payment of an appraisal award may automatically satisfy the statutory conditions necessary to bring a bad faith cause of action. This only leaves the issue of whether the amount of the appraisal award qualifies as a “favorable resolution,” satisfying the second prerequisite for bringing a statutory first-party bad faith action. It is important for an insurer to understand that even with a judgment of no breach of the contract, the insurer could

still face a bad faith action. As a result, insurers may see an increase in post-appraisal litigation. Insurers should continue to monitor the *Trafalgar* decision to determine whether rehearing is granted or appeal to the Florida Supreme Court ensues, as well as how other Florida District Courts of Appeal weigh-in on the issue.

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